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CURRENT TOPICS

International Bar Association: London Conference

THE Law Society and the General Council of the Bar, as joint hosts, this week welcome to London many distinguished lawyers from all over the world on the occasion of the Third International Conference of the Legal Profession, held under the auspices of the International Bar Association. The conference, extending from 19th to 26th July, has a full programme of discussion, and among others papers are to be contributed by the Attorney-General and by the Solicitor-General of the United States. A number of excursions and sight-seeing tours have been arranged, and delegates to the conference have been or will be entertained at receptions given by the Government, The Law Society, the Inns of Court and the Twelve Great Companies of the City of London. On 25th July there will be a closing banquet at Guildhall. We wish the conference every success and hope that our visitors will carry away with them a memorable recollection of London, 1950.

Sir Albion Richardson, K.C.

SIR ALBION RICHARDSON, K.C., C.B.E., whose death on 7th July we regret to record, was during the earlier part of his legal career a solicitor and a partner in the firm of Parker and Richardson, of New Broad Street. He was thirty-eight when he was called to the Bar at Gray's Inn and had already more than a year previously, in 1910, been elected to Parliament as a Liberal. His work at the Bar was mainly commercial. He became a C.B.E. in 1918 for his public services, and in 1919 he received a knighthood. During the 1914–18 war he was Chairman of the Appeal Tribunal for the County of London and served on many government committees thereafter. In 1930 he took silk and was made a Bencher of his Inn, of which he became Treasurer in 1944. In 1931 he became Recorder of Warwick and in 1936 Recorder of Nottingham.

Town and Country Planning Classes Order: New Use

As from 21st July the Town and Country Planning (Use Classes) Order, 1948, has been revoked and replaced by a new order (S.I. 1950 No. 1131), which now prescribes the classes of use of land within which a change from one use to another will not constitute development. By a process of amalgamation and rearrangement of the twenty-two classes specified in the order of 1948, the new order reduces the number of classes to eighteen, with a consequent widening of the range of changes of use which may be effected without involving development. Thus, for example, classes X and XI of the old order are amalgamated in the new class X ("use as a wholesale warehouse or repository for any purpose"). Similarly, the old classes XVII and XVIII are now combined, as are the old classes XIX and XXI, and the old classes XX and XXII. The greater flexibility of use of premises permitted by these changes in the new order is in line with the Minister's known desire to eliminate irritating formalities

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in the system of planning control, and will enable, say, an exhibition hall to be used as an art gallery without invoking the ponderous machinery of an application for planning permission. It should be noted that the Town and Country Planning (Use Classes for Third Schedule Purposes) Order, 1948, remains unaffected by the new order, and, indeed, is incapable of being revoked or varied except by statute (see 92 SOL. J. 278). That order, it will be remembered, prescribes classes of use deemed to be within the "existing use" of land on the 1st July, 1948, for the purpose of assessing restricted value in connection with claims for depreciation against the £300,000,000 fund or for assessing compensation in the event of compulsory purchase, and the classes prescribed in the "Third Schedule Purposes" order were in fact identical with the now revoked Use Classes Order of 1948. Certain of the changes now made in the new order may result in claims for compensation arising under s. 20 of the Act. For instance, a change of use from a boarding school to an orphanage (both formerly included in class XIII of the old Use Classes Order) now involves a change from the new class XII to the new class XIV and the consequent necessity to obtain planning permission, although both uses are deemed to be included within the "existing use" by virtue of the "Third Schedule Purposes" order. If in such a case permission were refused or granted on conditions, compensation might become payable by virtue of s. 20.

Leasehold Reform

THE ATTORNEY-GENERAL'S replies in the Commons on 10th July to questions on the subject of leasehold law reform clearly show that the Government regard the matter as urgent, notwithstanding its great complexity. He said that a number of meetings had already been held on it and the Government were well aware that every-day situations of great difficulty, if not of injustice, were occurring, and desired to introduce legislation at the earliest moment. In answer to Brigadier MEDLICOTT, he said: "It is the fact that a large number of leases granted in the middle of the nineteenth century are beginning to fall in, and the situation is worse than in years gone by and is likely to become increasingly so." The injustice arising from the expiry of ground leases was, of course, only one part of the subject-matter of the report. The recommendations designed to give business tenants a measure of that security of tenure which they at present lack, and those with regard to the repair of dwelling-houses and compensation for improvements, raise urgent problems requiring immediate Parliamentary debate and legislation.

Late War Damage Claims

IN reply to a number of pleas to make "administrative easements" of the "grave injustices to small owners" arising from the rejection of late claims for war damage compensation, Sir STAFFORD CRIPPS on 11th July pointed out that the War Damage Commission had done an immensely difficult job with great efficiency, and on the whole with great humanity. The receipts had amounted to £200,000,000 and they had paid out £900,000,000, and this year expected to pay out £75,000,000. The Commission were still accepting late notifications where there was some acceptable reason for the extraordinary delay and where there was substantial structural damage still unrepaired. During the year ended June, 1949, there were 1,200 to 1,300 new notifications. Before too long they would have to fix a definitive date. It was not their money they were giving away. When he came to collect that money the atmosphere of the House was quite different, said the Chancellor.

Mr. Shaw on Divorce after Separation

INTO the mill-stream of controversy on the subject of divorce after separation the well-known solver of legal and other puzzles, Mr. GEORGE BERNARD SHAW, has plunged with all the expertise of a practised diver. In a letter to *The Times* of 14th July, after a quick survey of the various motives, not all of them good, for a refusal to petition for divorce even after a long parting, he referred to the unreasonable but prevalent idea that divorce, even where a spouse was the innocent party, is a social disgrace, and he concluded that reports in the Press are undesirable. He proposed that divorce of the separated be made compulsory and secret so far as the names of the parties are concerned. No doubt Mr. Shaw understands that it is not a simple matter to open a legal doorway, especially where a vital principle like the administration of justice in public is concerned. There are still many good reasons why the names of the parties to divorce proceedings should not be withheld from the Press. These reasons are not confined to questions arising out of the laws against bigamy, but extend to the general respect in which the laws of any civilised society require marriage to be held. As for Mr. Shaw's suggestion that the Home Office should have compulsory power to cancel marriages in certain cases, we find it difficult to believe that he has given the matter careful consideration. In asking why a marriage licence should be held more sacred than a driving licence, he omits to observe that the termination of a driving qualification can be effected only by the courts, and in public.

On Hearing the First Writ in Spring

HAVING accustomed ourselves during the last war to the problems of construing newspaper headlines which referred to "Nazi 'planes," we should be well equipped to understand such peculiarities of journalese as the announcement that Communist tanks are probing a G.I. line in Korea. It is now obviously but a matter of time before we read of the exploits of a Socialist (or will it be Conservative ?) battleship. Lawyers should no doubt express themselves diffidently concerning the jargon of others, being (so it is generally thought) somewhat in the position for this purpose of black pots *vis-à-vis* kettles of a similar hue. But, when we consider some of the legal reports of the popular Press, we feel emboldened to make our good-natured protest. In one short week we have noted that "a writ is to be heard on Friday"; that an applicant "signed affidavits and two summonses for hearing in the High Court," which summonses were subsequently "filed in a High Court Registry"; and that a lady "received a £750 judgment for slander." Solicitors, who are constantly turning legal technicalities into words of one syllable for the understanding of lay clients, will sympathise with the authors of these unhappy phrases. We hope that those authors will forgive us for remarking that the results of their well-intentioned efforts remind us of the classic attempt of our maiden aunt to describe what she saw at a cricket match.

Recent Decision

In *Caminer and Another* v. *Northern and London Investment Trust, Ltd.*, on 10th July (*The Times*, 11th July), the House of Lords (LORD PORTER, LORD NORMAND, LORD OAKSEY, LORD REID and LORD RADCLIFFE) held that the owners of a hundred-year-old elm tree which had caused damage and personal injuries through falling on to a motor car on the highway were not liable for failing to lop, top or pollard the tree, as it was apparently healthy and showed no signs of elm butt rot from which it in fact suffered.

TWO ASPECTS OF MISTAKE—I

THE QUALITY OF A MISTAKE

RENT restrictions cases continue to be reported in such profusion that those of us who have no professional occasion to follow the general run of them may count ourselves fortunate. From time to time, however, there crops up a Rent Act case with implications outside the field of landlord and tenant law, reminding us of the dangers alike of over-specialisation and of too stereotyped a view of the trend of legal development. Such a case, most emphatically, is *Solle* v. *Butcher* [1949] 2 All E.R. 1107, which may be said to have been diverted from the not untroubled stream of Rent Restriction into the marshes of Mistake. Its fate amid these new hazards seems sufficiently significant to justify a brief account in the general columns of this journal.

It is first necessary to assimilate the facts of the case. A flat was let in 1939 at £140 per annum. In 1947 reconstruction work was done by the removal of certain inner walls, and war damage to the building of which it formed part was repaired. The work was executed by the defendant, who had acquired the building with the idea of letting the flats. He had discussed with the plaintiff, a business associate of his, the question of the repairs and the rents to be charged. The plaintiff obtained the advice of counsel, after which both parties felt satisfied that the 1939 rent did not apply to the flat in question as the standard rent, on the ground that the structural alterations and improvements had rendered the flat a new and distinct dwelling-house of which the standard rent had not so far been fixed. Subsequently the defendant let the flat, with a garage, to the plaintiff on a seven-year lease at a rent of £250. No notice of increase of rent had been given. After the tenancy had run for some time, the plaintiff brought this action against the defendant for recovery of rent overpaid on the footing that the standard rent was, after all, £140; to which the defendant replied by counter-claiming for rescission of the lease on the ground that the parties had entered into it under a mutual mistake of fact. With the lease rescinded, but not of course while it was in existence, the landlord would have been entitled to give notice of permitted statutory increases on account of structural alterations and increase of rates which would in fact have brought up the rent to £250.

The questions arising on these facts with the conclusions on them of the majority of the Court of Appeal may be summarised thus:—

(1) Had the premises in fact changed their identity by reason of the alterations, or of the inclusion of the garage in the letting, so as to constitute a new dwelling-house? No. In regard to the garage, *Langford Property Co.* v. *Batten* (1949), 93 SOL. J. 616, applied.

(2) Was the assumption by both parties that such a new dwelling-house had been constituted a mistake of fact or of law? Mistake of fact (see below).

(3) Was this mistake such as to avoid the contract or to entitle the defendant to have it set aside? It could be, and was, set aside on complicated terms which are detailed in the report and which were designed to put the parties in the same position as if notices of increase had first been duly given and the lease then executed.

(4) Did it make any difference to (3) that the contract took the form of a duly executed lease? No.

(5) Was the plaintiff estopped by reason of the lease from challenging the legality of the rent thereby reserved? No. Parties can no more defeat the purposes of the Rent Acts by reliance on estoppels than they can contract out of the Acts (*Welch* v. *Nagy* (1949), 94 SOL. J. 64).

An order was made as indicated in (3), above.

Of these heads we may select for discussion in this article the second. Among several purposes for which it is necessary to distinguish between matters of fact and matters of law, the ascertainment of the true quality of a mistake is certainly prominent. So far as the common law was concerned it was vital to make the distinction, for whether the question of mistake was relevant as affecting the reality of consent in the formation of a contract, or as a ground for the implication by law of a contract to repay money, no effect could be assigned to a mistake of law. The reason for this well-known rule of the common law is only partly that we are all taken, by an assumption less reasonable than flattering, to know what the law is; the general desirability of putting an end to litigation is also a factor (see *per* Lord Esher, M.R., in *Ex parte Simmonds* (1885), 16 Q.B.D. 308). Equity did not adhere so rigidly to this rule (see, e.g., *Allcard* v. *Walker* [1896] 2 Ch. 369), but did not ignore it altogether, and it was in an Irish Chancery case that the House of Lords laid it down that a common misapprehension as to the private rights of the parties was not within the mischief of the maxim *ignorantia juris haud excusat*, so that it might lead to a contract being set aside just as if it were a mistake of fact (*Cooper* v. *Phibbs* (1867), L.R. 2 H.L. 149).

At all events the question of the nature of the mistake which the parties had made was debated in *Solle* v. *Butcher*, and the judgments reveal a sharp difference of opinion on the point. Jenkins, L.J., agreeing with the county court judge, took what to most people would seem the natural view. The mistake was as to the effect of certain public statutes. The parties knew all the facts bearing on the effect of the Rent Acts on a lease of the premises, but they mutually misapprehended the effect which, in that state of facts, those Acts would have on the lease. His lordship thought that this was a mistake of law of a kind which had never previously been held to afford a ground for rescission.

On the other hand, in the opinion of Bucknill, L.J., the mistake was one of fact. The material issue in deciding whether or not the standard rent of the flat had already been fixed was the identity of the premises with those which had been let in 1939. The parties had addressed their minds to this issue. From the facts known to them an inference might have been drawn either way, namely, that there had been a change of identity or that there had not. His lordship proceeds: "In a case tried in the county court where the claim is based on negligence, if the facts were such that a judge could properly hold that there was negligence, that is a finding of fact, and I apprehend that no appeal would lie to the Court of Appeal. In my opinion there was a mutual mistake of fact . . ."

The existence of the possibility of more than one correct inference has been recognised elsewhere as a characteristic of a question of fact (see *per* du Parcq, L.J., in *Bean* v. *Doncaster Amalgamated Collieries, Ltd.* [1944] 2 All E.R. 279). Bucknill, L.J.'s parable from the case of negligence surely amounts to this, that if a county court judge came to a certain conclusion on this issue of identity, whether for or against a change of identity, his decision could not be upset if there were evidence to support it. Only if there were no such evidence could any question of law arise. In that event, the absence of evidence in favour of one view would destroy

the possibility of alternative inferences being drawn, and so convert the proper inference into a matter of law. But if the county court judge's decision as to the identity of the premises and the consequential determination of the standard rent was one of fact, so also must the parties' error in coming to an opposite conclusion have been a mistake of fact.

Denning, L.J., seems to avoid direct entanglement in this difference of opinion between his brethren, though his insistent reference to *Cooper* v. *Phibbs*, *supra*, could be taken as implying that he regards the parties' common misapprehension in the case before him as having reference to their relative and respective private rights, i.e., to fact, and not law. When it is remembered that the standard rent of a dwelling-house is a matter affecting not alone a particular landlord and tenant but everyone concerned in a letting of the premises, it becomes at least doubtful whether the learned lord justice intended to go so far as this. It seems equally likely that, basing as he did his solution to the whole case on the equity authorities, he did not set overmuch store by the quality of the misapprehension, echoing (it may be) Lord Chelmsford's reference to a "mere" mistake of law (*Earl Beauchamp* v. *Winn* (1873), L.R. 6 H.L. 234, a case to which Denning, L.J., briefly alludes).

The working out of that solution it is hoped to discuss in a further article.

J. F. J.

LOCAL AUTHORITIES, THE PRESS AND THE PUBLIC

A good deal of attention has been given recently to the methods by which local authorities keep the public informed of their activities. Most of this interest has been stimulated by the Consultative Committee on Publicity for Local Government, which was set up in 1946 to advise the Minister of Health and the local authorities' associations on general questions of local government publicity. The committee has published two reports, an Interim Report in 1947 and a Final Report on 10th July last. The committee now considers that the time has come to bring its activities to a close. Future developments must rest with local authorities, for the committee disapproves of a suggestion by the National Association of Local Government Officers that there should be a permanent Public Relations Council for local government.

The Final Report largely reiterates the conclusions reached in the Interim Report and in the two Press statements issued by the committee. The most recent was that issued on 9th January on publicity methods adopted, other than through the medium of the Press.

Press relations formed the subject of an earlier statement in which the views of nearly seven hundred local authorities were analysed and summarised. One of the commonest methods of co-operation with the Press disclosed in the report was the circulation of the council agenda and accompanying papers to the Press in advance of the council meeting. Over one hundred authorities indicated that they adopted this practice.

Much less agreement was shown on the committee's recommendation that there should be no embargo on Press comment on these reports before the meeting. On the one side it is argued that publication of reports before a council meeting should not include any comment which might influence the debate. Other authorities contend that attempts to muzzle the Press until after the council meeting, when a final decision has been taken, are of no advantage,

Periodic conferences or discussions with the Press have become a regular practice with some seventy-nine authorities, and about half as many have set up public relations committees or appointed public relations officers.

Probably the most controversial matter dealt with in the report relates to the admission of the Press to committee meetings. The practice of admitting the Press is a rare one—under thirty local authorities have adopted it, and even statements to the Press of committee decisions were the practice in some thirty-five cases only. The majority of local authorities appear to feel that the presence of the Press cramps discussion. They point to the delay which must occur if the Press have to withdraw from time to time when matters of a confidential or personal nature are being discussed, e.g., the acceptance of tenders or the salary of an official. Only a small minority found that the greater public interest which followed full Press reports overcame these possible disadvantages. Indeed, a few authorities seem reluctant to accept the view of the interim report of the committee that as much business as possible should be conducted in open council.

It is quite clear from the report that local government has not attained the full democratic publicity that is considered essential to the workings of both Parliament and the courts. Whether this degree of publicity is desirable is a matter of opinion. It is clear and significant that Parliament, in its law-making capacity, has never considered it essential that local authorities should operate in the full glare of publicity. The law is such that local authorities can operate without much scrutiny of their actions, whether from the Press or electors, and the purpose of this article is to examine the legal position.

Rights of the Public

Most local government electors would probably be astonished to learn that the law provides for their admission only to the meetings of the smallest local government unit in the country, the parish council. Even here the right of admission can be negatived if the parish council direct under the Local Government Act, 1933, Sched. III, Pt. IV, para. 1 (4). But there is no corresponding provision as regards county councils, borough councils or district councils. As Kekewich, J., said in *Tenby Corporation* v. *Mason* [1908] 1 Ch. 457, "I cannot deduce any intention on the part of the Legislature that the public shall have a right to be admitted to the meetings." Of course, there is nothing to prevent the public from being admitted to meetings of local authorities or an authority from making such provisions as they think fit as to the admission or exclusion of the public by means of standing orders made under the Local Government Act, 1933, Sched. III, Pt. V.

If the law does not, then, provide for the admission of ratepayers to meetings of local councils, have they any other means of obtaining information? The answer is that, apart from reading Press reports, a member of the public can only keep abreast of the activities of his local council by exercising his right of inspection of the minutes of proceedings of the authority under s. 283 of the Local Government Act, 1933. Any local government elector for the area of the local authority can exercise this right at all reasonable hours on payment of one shilling, and may make a copy or extract from the minutes. As far as can be judged, this right is not often exercised. The ordinary elector can get his information more conveniently and more cheaply by reading a local newspaper. There is a surprising number of reported cases—with which we need not deal—on the exact nature of the right conferred by

s. 283. If the facts in these cases are any guide, they suggest that when the right of inspection is exercised the person inspecting has probably some axe to grind against the local authority. Although the Act provides for a penalty of £5 if the custodian of the minutes obstructs any person entitled to inspect the minutes, in fact the only way to secure inspection, if it is refused, is by mandamus.

It is generally agreed that where a local authority delegate their functions to a committee the minutes of that committee become " minutes of the proceedings of the local authority " for the purpose of s. 283, and so are open to inspection. This point is of some importance, as will appear later. We may in passing note that the Consultative Committee recommends that whenever a comm. ttee has delegated powers, more authority should be given for information to be supplied to the Press—assuming the actual admission of the Press is inappropriate.

Rights of the Press

The Press enjoy better rights than local government electors, for their representatives have a right to be admitted, subject to certain restrictions, to the meetings of every local authority. The Act under which this right is enjoyed, the Local Authorities (Admission of the Press to Meetings) Act, 1908, was passed as a result of the decision in the case of *Tenby Corporation* v. *Mason*, *supra*. In this case Tenby Corporation, being dissatisfied with Mr. Mason's prowess as a shorthand writer (based on a report of their proceedings which he had published for the *Tenby Observer*) refused to admit him until his shorthand was efficient, although they would have accepted another reporter from the paper. It was held that they were entitled to exclude him in this way if they wished.

Valuable as the right of admission is, there are two substantial restrictions which minimise its effect in practice. First, a local authority may resolve at the meeting that the temporary exclusion of the Press is advisable in the public interest in view of the special nature of the business then being dealt with or about to be dealt with. The effect of this proviso is to make the admission of the Press a matter for the ultimate discretion of the local authority. Secondly, the Act does not entitle the Press to attend meetings of the *committees* of local authorities (s. 3) unless the committee is itself a local authority as defined in s. 2. Certain committees are included in the definition of " local authority " and these committees the Press may attend. As an example we may quote an education committee, so far as respects any acts or proceedings which are not required to be submitted to the council for its approval.

We must at this point mention the practice, which has been growing steadily over past decades, by which councils delegate a large part of their business to committees. In such cases the minutes of the committee need not be submitted to the council for approval. The normal custom is merely to require the committee to report as to the exercise of its powers. It will be realised at once that a widespread use of the power to delegate to committees considerably reduces the right given to the Press to attend meetings of the local authority.

At these meetings the business may be purely formal, the real business having been transacted by a committee. Earlier in this article we expressed the view that the minutes of a committee with delegated powers were open to inspection as being part of the proceedings of a local authority. By the same reasoning, can the Press not claim admission to meetings of committees exercising delegated powers? The answer appears to be no. The power to delegate was known in 1908 (e.g., the Midwives Act, 1902, s. 8), yet it was thought necessary to deal specifically with education committees in the Act of 1908 by including them within the phrase " local authority." The inclusion of this one committee by name when exercising delegated powers would seem to exclude the others, particularly in view of the express provision against the admission of the Press to committees.

An example of a committee which was not specially mentioned in the definition of " local authority," but to which the Press could claim admission, was to be found in assessment committees set up under the Rating and Valuation Act, 1925. These committees were not in so many words within the definition of " local authority " in s. 1 of the Act of 1908. The expression " local authority " in that Act, however, includes, *inter alia*, " any other local body which has, or may hereafter have, the power to make a rate." Assessment committees fell within this definition by virtue of the definition of " rate " in the Act of 1908 and their power to precept for expenses under s. 53 (1) of the Rating and Valuation Act, 1925, and so the Press could go to their meetings. But cases of this sort are rare, and in practice under present-day conditions the proviso about committees drastically cuts down the rights given to the Press under the 1908 Act.

What has been set out above should make it clear that, whatever the state of local authorities' relations with the Press and the public, the Legislature has never placed upon them any straightforward responsibility to carry out their functions " in open court." Indeed, the reverse is true. The local authorities can reasonably claim that Parliament has accepted that they should function largely in private.

J. K. B.

PROFESSIONAL CONDUCT IN ADVOCACY

Books upon social conduct and etiquette used at one time to command a ready sale. They were usually compiled by titled ladies and they opened to a wide public the secret formulæ of good behaviour in polite society. Those engaged in the practice of the law may legitimately envy that wider public whose aspirations to arcane knowledge could be so easily and readily satisfied.

Professional etiquette is still a matter largely undefined—but nevertheless fraught with disastrous consequences for those who practise under its lowering shadow—and like the law itself it is only clarified by its application to the facts of particular cases. In recent months there have been two such cases—both happily resolved by the appropriate professional bodies in favour of the practitioner. The first in point of time concerned cross-examination as to credit. Authorities upon this type of matter are, like the byelaws of some transport undertakings, far to seek, but Lord Herschell had this to say on the matter in his " Rights and Duties of an Advocate ": " I recollect that in days when briefs were very few and far between, and clients very welcome, I was engaged as counsel in . . . an action brought to recover damages for an accident for which it was alleged the defendant was responsible. That the plaintiff had been seriously injured was not in dispute—the only controversy being whether the defendant had been guilty of negligence. I was instructed to put questions to the defendant seriously impeaching her morality. I pointed out that they could have no possible bearing on the case, and could not affect either the defendant's liability or the amount of the damages to which the plaintiff was entitled.

Nevertheless, my client insisted that I should put them. I absolutely refused. I did no more than was my duty. It is impossible to lay down any rule applicable to the widely varying circumstances that may arise, which will afford an infallible guide to the cases in which it is legitimate to attack the character of a witness. The advocate must be himself the judge as to whether a question should or should not be put. But this line I think at least may be drawn—that he should never allow himself to ask a question injurious to a witness unless he is well satisfied that it is necessary in the interests of his client, and that the answer to it, if it be such as he anticipates, ought to influence the tribunal in its determination of the case."

One may legitimately hope that Lord Herschell's adherence to his professional duty did not lose him a client at a time when, as he says, they were very welcome. Cecil Walsh, however, was not so fortunate: "I remember losing a client because I absolutely refused to put to the conductor of a public carriage, who was called to speak of what he saw in a street accident, the fact that he was at that moment undergoing imprisonment for peculation from his employers. He was called by the employers, it was true, and it was suggested that he might, although he had left their employment for jail, have hopes of repurchasing his employment by perjuring himself on their behalf. But this view seemed to me to be too far-fetched. He was present on the occasion. His evidence might or might not fit in with the rest of the story. If it did not, it went for very little; if it did, the fact that he was a convicted thief had really no bearing upon it. To put the question seemed to me a piece of superfluous brutality, and likely to do the man needless injury to no real purpose. It is impossible to dogmatise. Instinct and tact are the best guides" ("The Advocate," 2nd ed., 1926).

Hilbery, J., in "Duty and Art in Advocacy" goes a little further and says: "No question which conveys a definite and damaging imputation on the character of a party or witness ought to be put unless the solicitor instructing counsel vouches the truth of the matter and can show that there is material in existence for making the allegation. For example, the mere fact that a solicitor informs his counsel that the other party was convicted of felony at the Old Bailey on a certain date is not sufficient to justify the barrister in asking that party in cross-examination whether that is the fact. He must have more than that. He must have a certificate of the conviction in his hands and some evidence that the person named in the certificate is the same person as the one who is being questioned.

"But even if the truth of something detrimental to the character of a witness is beyond question it may be an abuse of his privileged position if the advocate puts it to the witness. The purpose of cross-examination as to character is to destroy the credibility of the witness. Questions which may damage a reputation are not justified unless they are relevant to the issue or go to show that the witness is not to be trusted to say the truth. Nothing could be more appropriate where the truth of what a witness has said is in issue, than to ask the witness, because it is the fact, whether he was not convicted on certain specific occasions, and sentenced for obtaining money by false pretences. But there is no justification, for example, for asking a woman witness, by way of challenging her veracity, whether on a certain date she did not give birth to an illegitimate child. Lord Birkenhead did this once when he was Mr. F. E. Smith, K.C., and was castigated for doing it by Sir Samuel Evans, then recently made president of the Probate, Divorce and Admiralty Division."

It is interesting to note in this connection that one of the canons of the American Bar Association reads thus: "A lawyer should always treat adverse witnesses and suitors with fairness and due consideration, and he should never minister to the malevolence or prejudice of a client in the trial or conduct of a cause. The client cannot be made the keeper of the lawyer's conscience in professional matters. He has no right to demand that his counsel shall abuse the opposite party or indulge in offensive personalities. Improper speech is not excusable on the ground that it is what the client would say if speaking on his own behalf."

The facts in a recent case in point which received publicity were that Mr. X pleaded not guilty to obtaining £100 from Mrs. Y by pretending that a bank owed him £700, and also to another similar charge involving a cheque for £500. Cross-examined by counsel for X, Mrs. Y said she had never been in love with X. They had, however, a strong bond of friendship and were on intimate terms. Counsel then said: "I suppose you would describe yourself as a perfectly immoral woman," to which Mrs. Y replied: "I certainly would not." Counsel then said he was not going to put X in the witness box and, addressing the jury, said it was not safe to rely on the evidence of someone who was "a worthless woman." Summing up, the judge said: "What do you think of this case when a person at whose instance the attack on Mrs. Y has been launched does not go into the witness box and give you his account about matters in which the only two persons who can know the truth are Mrs. Y on the one hand and himself on the other?" After X had gone to the cells the learned judge asked counsel if, when he conducted the cross-examination, he knew that he was not going to call X. Counsel replied that he knew that his client was not going into the witness box subject to anything that he might have said by way of further instructions. The judge then said he would consider whether counsel's conduct of the defence should not be brought to the notice of those persons "who have the good reputation of our profession at heart." Apparently, however, counsel also submitted the matter to the Benchers of his Inn.

At this stage it will be well to state the rulings of the Bar Council on this matter as set out in its annual statement for 1917. They are as follows:—

(1) Questions which affect the credibility of a witness by attacking his character, but are not otherwise relevant to the actual inquiry, ought not to be asked unless the cross-examiner has reasonable grounds for thinking that the imputation conveyed by the question is well founded or true.

(2) A barrister who is instructed by a solicitor that in his opinion the imputation is well founded or true, and is not merely instructed to put the question, is entitled *prima facie* to regard such instructions as reasonable grounds for so thinking and to put the questions accordingly.

(3) A barrister should not accept as conclusive the statement of any person other than the solicitor instructing him that the imputation is well founded or true, without ascertaining, so far as is practicable in the circumstances, that such person can give satisfactory reasons for his statement.

(4) Such questions, whether or not the imputations which they convey are well founded, should only be put if, in the opinion of the cross-examiner, the answers would or might materially affect the credibility of the witness; and if the imputation conveyed by the question relates to matters so remote in time or of such a character that it would not affect, or would not materially affect, the credibility of the witness, the question should not be put.

(5) In all cases it is the duty of the barrister to guard against being made the channel for questions which are only intended to insult or annoy either the witness or any other person, and to exercise his own judgment both as to the substance and to the form of the questions put.

It will be seen from this statement that it is the solicitor's duty to satisfy himself that the imputations are well founded or true, and even then he should not press counsel to make them unless counsel considers that they affect credibility and are material.

In due course the Benchers of the Middle Temple announced their decision on the facts above stated to the effect that counsel had not misconducted himself. Presumably, therefore, the circumstances came within the rules promulgated by the Bar Council. The learned judge's main ground of objection appears to have been that the defendant was not put in the box to substantiate the imputations made by his counsel, but there appears to be no authority for the proposition that this should be done—provided that counsel is satisfied by his solicitor that the imputations are well founded or true, and that they affect credibility and are material, there would seem to be no obligation on him to substantiate them at a later stage. The judge's reaction, however, is clear indication of the unfortunate effect which a failure so to do may have upon the judicial mind.

A second case of alleged professional misconduct arose thus: At the conclusion of a divorce case the presiding commissioner said there had been an unfortunate incident in the case. One of the counsel was guilty, as he thought, of professional misconduct in interviewing a witness outside the court just before the witness went into the box. It was a matter which should be well known that counsel should not interview witnesses; the only exception being in respect of experts. Counsel was not in court when this was said, but made a personal statement at the rising of the court. He read to the court the following ruling contained in the Annual Statement of the Bar Council for 1927: "The Council has had under its consideration a communication received from a barrister asking whether, in the opinion of the Council, the practice of counsel conferring with witnesses of fact, either singly or in the presence of each other, is contrary to the established practice of the profession." The following resolution was passed: "That in the opinion of the Council it is a recognised practice that witnesses (other than the parties and expert or professional witnesses who are instructing counsel) should not be present at consultations or conferences with counsel and that counsel should not interview such witnesses before or during a trial. It is recognised, however, that there must necessarily be exceptions to this practice. It is not possible to formulate the circumstances in which a departure from the practice is permissible. This is a matter which must be left to the judgment and discretion of counsel in each case."

In the present case, counsel averred, he had used his discretion most carefully, and had come to the conclusion, which he adhered to, that it was his bounden duty to interview the witness. The circumstances were remarkable if not unique. The witness had given a proof to his solicitor client, corrected it, and returned it with written instructions that he was prepared to testify on behalf of the solicitor's lay-client (the wife). The case had been opened on Friday and adjourned to Monday. There was reason to suppose that the witness had been approached by his father over the week-end, and it was brought to counsel's attention that he no longer wished to testify for the wife. "In these circumstances I asked my instructing solicitor to bring the witness to me to inquire whether he was going to give evidence for the wife in accordance with his proof. I asked him, in the presence of the solicitor, to read his proof, and whether it was true. He told me it was. Within twenty minutes he went into the box and proceeded to say that every word in it was untrue. Mistakes, one knows, can be made, but in my submission I was acting in accordance with the code of the Bar and used my discretion properly." The commissioner said: "This is the very type of case in which the course adopted by you should not have been taken. Since I have been at the Bar I have always adhered to this, which was the undoubted practice as to how members of the Bar should behave with witnesses, other than experts."

In due course the Benchers of the Inner Temple appointed a committee to consider the case and report to them. This was done and the Benchers adopted a recommendation of the committee in the following terms: "We are unanimously of the opinion that Mr. . . . has not in any way been guilty of any professional misconduct. We are satisfied that in accordance with the rule of the Bar Council he did exercise his discretion and judgment as counsel in this particular case. Further, at the request of Mr. . . . , we have considered all the circumstances of the case, and we are satisfied that he exercised his judgment and discretion properly."

The commissioner was clearly in error in saying that the only exception to the rule lay in interviewing expert witnessses. There may be many exceptions to this rule—one type of exception is known, at all events, from the result of this particular case—but it must be for counsel, exercising his own discretion and judgment, to decide when such exception exists.

This rule, which was not generally appreciated by many in both branches of the profession, clearly lays a heavy burden upon solicitors. Since counsel may not see the witnesses in conference it becomes all the more important that the solicitor should himself interview the witnesses and elicit the full facts of their proof. He will have to put himself to a large extent in counsel's place in probing the lay-client's evidence, and will have to cross-examine the witnesses so as to search out any weaknesses in their evidence to the end that the proof only contains matter which counsel can confidently rely upon being able to elicit without difficulty when the case comes for hearing. It is for the solicitor to decide as to the reliability and trustworthiness of witnesses. Counsel will have to rely entirely upon his judgment.

G. H. C. V.

Costs

CHARGING ORDERS

We have discussed in an earlier article the remedies open to solicitors to enable them to recover the amount of costs due to them, and the recent case of *Loescher* v. *Dean* [1950] 2 All E.R. 124, decided by Harman, J., on the 16th May last, again brings the matter into prominence.

It will be recalled that a solicitor may either exercise a lien over moneys or documents in his hands belonging to the client, or he may obtain a charging order under s. 69 of the Solicitors Act, 1932. This latter provision states that any court in which the solicitor has been employed to prosecute or defend any suit, matter or proceeding may at any time declare the solicitor entitled to a charge on the property recovered or preserved through his instrumentality for his taxed costs in reference to that suit, matter or proceeding. The section then

goes on to provide that no order shall be made if the right to recover has been barred by the Statute of Limitations.

The relief is limited to a sum recovered or property recovered in an action, and the right to a charging order therefore extends to moneys coming into the solicitor's hands as a result of a negotiated settlement of the action (see *McLarnon* v. *Carrickfergus U.D.C.* [1904] 2 Ir. R. 44), since they are still moneys recovered through the instrumentality of the solicitor; but not moneys arising as a result of a negotiated settlement of a dispute where there is no action (see *Meguerditchian* v. *Lightbound* [1917] 1 K.B. 298).

Now, in the recent case of *Loescher* v. *Dean, supra*, an action was brought for specific performance of a contract for the sale and purchase of property, and judgment was given in favour of the plaintiff purchaser to the effect that the property should be conveyed to him by the defendant vendor on payment of the sum of £268 and his taxed costs. It was against this sum of £268 which was paid over to the vendor's solicitor that the latter sought to obtain a charging order. Harman, J., however, decided that since the sum was paid to the vendor against his will as a result of the judgment in the action for specific performance it could not reasonably be said that the sum was money or property "recovered or preserved" in an action, so that the remedy provided by s. 69, *supra*, was not available to the vendor's solicitor. He added, moreover, that the decision in *Re White* (1933), 49 T.L.R. 325, could not be cited as supporting the proposition that moneys coming unwillingly into the hands of a party to an action for specific performance are moneys or property recovered or preserved in an action within the meaning of s. 69.

It would seem, therefore, that the wording of the section must be read with a narrow and restricted meaning, and that a charging order under the section can only be made against money or property which has formed the subject-matter of a claim in an action. This seems to indicate that such an order could never be obtained against funds which arise as a result of a solicitor acting for an unsuccessful defendant in an action for specific performance.

There is one point here which may be noticed in passing. The remedy afforded by the section does not extend only to money or property coming into the hands of the solicitor acting for the client. Thus, judgment may be satisfied by the payment of the judgment debt to a third party, and it would seem therefore that the solicitor would be entitled to a charging order against the money in the hands of such third party.

So, also, where the defendant in an action has successfully set up a counterclaim in an action where the plaintiff has been successful, and, under the terms of the judgment, the amount of the counterclaim is set-off against the amount of the plaintiff's claim, so that only the balance is payable to the plaintiff. In such a case it appears that the terms of s. 69 are satisfied, for the amount of the counterclaim is a sum recovered or preserved in an action. However, in practice the sum representing the counterclaim would remain in the hands of the defendant and a charging order would possibly not be the best remedy, although it has the merit of being speedy since the solicitor can obtain a charge on the funds pending the hearing of the summons for the charging order by applying *ex parte* by affidavit for such an interim charge to be included in the summons.

Loescher v. *Dean* is also interesting in another respect in that it brought into prominence the question whether it was possible to attach by garnishee proceedings funds in the hands of a solicitor who had properly paid the amount into his "client" banking account in accordance with the Solicitors' Account Rules, 1945. It will be recalled that by r. 4 of these rules a solicitor is required to pay into a banking account in his own name in the title of which the word "client" appears any sums which he holds or receives on a client's behalf. In a sense this money is trust money, as du Parcq, J., observed in the case of *Plunkett* v. *Barclays Bank, Ltd.* [1936] 2 K.B. 107, but money so paid into such an account still gives rise to the position of debtor and creditor as between the bank and the solicitor customer, with the result that if a third party obtains a garnishee order *nisi* the bank must recognise such order and must treat it as applying to any debt which it owes to the solicitor, whether that debt arises from the solicitor's personal account or from the account in his name in the title of which the word "client" appears. This principle was firmly established in the case of *Plunkett* v. *Barclays Bank, Ltd., supra*.

In the case of *Loescher* v. *Dean* the successful plaintiff's solicitor obtained a garnishee order to attach all debts due from the defendant's solicitor to his client in respect of the taxed costs of the action which, by a curious coincidence, amounted to the precise amount of the purchase price of the property, namely, £268, whilst the defendant's solicitor took out a summons for a charging order under s. 69, *supra*. This was dismissed, however, as we have seen earlier, on the ground that the sum in the defendant's solicitor's hands was not money recovered or preserved in an action.

The important principle established by this case is, however, that although it was held, following the decision in *Plunkett* v. *Barclays Bank, Ltd., supra*, that the plaintiff was entitled to an order absolute in the garnishee proceedings to attach the money standing in the defendant's solicitor's "client" banking account, the defendant's solicitor had a prior lien on those same funds in respect of unpaid costs, and the garnishor could only attach such portion of the funds in the hands of the defendant's solicitor as was not affected by the lien for unpaid costs.

The point is of importance because the observations of du Parcq, J., in the *Plunkett* v. *Barclays Bank* case to the effect that money paid into the solicitor's "client" account at his bank in accordance with the Solicitors' Account Rules was in the nature of trust money gave rise to the suggestion that the common-law right of lien, which entitles a solicitor to recoup himself for the amount of his costs out of funds belonging to the client which come into his hands, does not extend to those funds which are paid into the "client" account at the bank. Some support for this view is to be found in the case of *Stumore* v. *Campbell* [1892] 1 Q.B. 314, where money had been entrusted to solicitors, and it was held by the Court of Appeal that the solicitors could not exercise a lien on those funds in respect of their costs, since the money was, in fact, a trust fund.

That case can, however, be distinguished from the normal case of money belonging to a client coming into the hands of a solicitor. There the money was deposited with the solicitors for a particular purpose. They were indeed trustees to the extent that they could deal with the money only in the way directed, and, failing those directions, hold it to the order of the client. In the normal way, the solicitor receives client's money as agent for the client, not for any specific purpose but to hold to the client's order.

Money paid into the solicitor's "client" account under the Solicitors' Account Rules is in no different a position from money formerly held by a solicitor on behalf of a client. Prior to the making of these rules many solicitors kept a special account at the bank into which they paid only the money which they were holding on behalf of the clients, in order to separate it from their own. It was trust money only to the

extent that it was held by the solicitor on behalf of the client and was not his, the solicitor's, own money. The making of the rules merely had the effect of giving statutory force to what had formerly been a voluntary arrangement, and did not in any sense alter the character of the funds which were paid into the "client" account. The solicitor's right to a lien on those funds applies, therefore, whether the money is in a special "client" account or not, except in those cases where the fund is impressed with a trust of which the solicitor is aware and of which the case of *Stumore* v. *Campbell*, *supra*, affords one example.

The case of *Loescher* v. *Dean* is important in three respects. In the first place it establishes the principle that money received unwillingly by an unsuccessful defendant in an action for specific performance is not money to which s. 69 of the Solicitors Act, 1932, applies. Secondly, the principle laid down in the case of *The Jeff Davis* (1867), L.R. 2 A. & E. 1, to the effect that the solicitor's lien for costs takes precedence over a garnishee order is confirmed, and thirdly, the suggestion that money paid into the solicitor's "client" account at his bank is trust money which cannot be subject to the common-law right to lien is shown to be without foundation.

J. L. R. R.

A Conveyancer's Diary

RESTRICTIVE COVENANTS AFFECTING LEASEHOLD INTERESTS

At first sight the decision in *J. W. Cafés, Ltd.* v. *Brownlow Trust, Ltd.*, reported shortly at p. 304, *ante*, may appear to be nothing more than an application of the rule in *Bain* v. *Fothergill* (1874), L.R. 7 H.L. 158, to somewhat unusual circumstances, but closer examination reveals that another, and a rather more interesting, point was raised as a sort of preliminary issue between the parties before the issue of the writ.

The plaintiffs' action was for breach of an agreement, whereby the defendants had agreed to grant to the plaintiffs a long lease of a shop on the terms of a form of lease (strictly speaking, an underlease, but this does not appear very clearly from the reports, and in any case nothing turns on this point) which was annexed to the agreement. This form of a lease contained one restrictive covenant only, viz., not to use the premises for the business of an auctioneer, surveyor, valuer or estate agent, and as the plaintiffs wished to carry on the business of a milk bar thereon this did not trouble them. In due course requisitions on title were delivered, and to a requisition asking whether there were any restrictive covenants affecting the land, the defendants answered in the negative. This was not in fact the case, and after taking counsel's advice the defendants corrected themselves, and informed the plaintiffs that they could not grant a lease in the form annexed to the agreement.

The difficulty which the defendants had discovered at this rather late hour was this: The defendants had acquired the head lease of the shop in question from X, the original lessee of these and certain adjoining premises which he had developed by building shops thereon. Some of the shops adjoining or adjacent to the shop which was the subject-matter of the dispute in this case had been let by X with the benefit of restrictive covenants, whereby X had covenanted not to permit to be carried on, on any other property of his in the neighbourhood, the trade or business for the purpose of which the tenants of these other shops had taken their respective premises. One of the shops so let by X before he had assigned his lease of the disputed premises to the defendants had been let for the purposes of a restaurant, and X, and, in certain circumstances, his successors in title were consequently bound by a restrictive covenant not to permit that business to be carried on in any of the adjoining premises, these premises including the shop which the defendants had agreed to let to the plaintiffs. The question whether carrrying on the business of a milk-bar proprietor, or permitting such a business to be carried on, would constitute a breach of a covenant not to carry on the business of a restaurant proprietor did not arise as a direct question for decision in this case, but the defendants evidently felt that they were not entitled, once the fact or the effect of the restrictive covenant affecting the premises had been brought to their notice, to grant a lease to the plaintiffs in a form which would either carry out their agreement or enable the plaintiffs to use the premises for the purpose they had in mind; and in this it would appear that they were certainly not over-cautious.

It is a matter of some interest to speculate as to the reasons why the existence of the covenant restricting the possible user of the premises was not disclosed at an earlier date. No explanation can be gathered from the reports, and one is left with two possibilities: either the defendants knew of the existence of this covenant at the date of their agreement with the plaintiffs, but for some unexplained reason did not think that it materially affected the premises comprised in the agreement, or X at the time of the assignment of the head lease of the premises to the defendants had failed to disclose the existence of the covenant to them. On either hypothesis there was, apparently, a failure to appreciate the effect of the covenant which, according to ordinary conveyancing practice, should have been disclosed at the earliest possible moment.

Now the restrictive covenant in this case was a covenant in a lease (between X and his underlessee), and as such not registrable as a land charge Class D (ii) under s. 10 of the Land Charges Act, 1925. There is no mention of this circumstance in the judgment in this case, but this is not a matter for any surprise since the only dispute between the parties was as to the amount of the damages to which the plaintiffs were entitled; liability had been admitted. But the fact that the covenant was a covenant between lessor and lessee in its inception may perhaps account for its non-disclosure, for it is not always realised that a restrictive covenant contained in a lease may bind a freehold interest, and thus be indistinguishable in all respects except that of duration from a restrictive covenant originating, as such covenants more usually do, upon a conveyance of a freehold interest. If the owner of Blackacre and Whiteacre lets Whiteacre, and in his lease covenants not to use or permit the use of Blackacre for a specified purpose during the term granted by the lease, the freehold in Blackacre is subjected to an incumbrance for the duration of the covenant. Such a covenant must obviously be disclosed, at least while it remains effective, on any dealing with the freehold interest in Blackacre. In the case under consideration the interest in the premises subject to the burden of the covenant in question which the defendants acquired from X was not, as it happened, a freehold but a leasehold interest, and as X was not the owner of the freehold at the time when the covenant came into existence he could

not bind the freehold; but he could bind his leasehold interest, and on similar principles it was his duty to disclose the existence of the covenant to the purchasers of his interest in the burdened premises.

The fact that a restrictive covenant is only capable of being registered if it is entered into otherwise than between lessor and lessee is anomalous in the case where, as here, the land affected by the covenant is not the land comprised in the document which gives rise to the lessor-lessee relationship, but other land of one of the parties which is subjected to the covenant as part of the consideration for the grant of the lease. It is not at all unlikely that the covenants which the draftsman had in mind when he framed this exception were those affecting the land the subject of the demise which creates the requisite relationship between the parties; but whatever the history of this particular provision, the existence of this anomaly justifies the importance which is usually attached to the requisition asking whether the premises are affected by any restrictive covenants, or any such covenants other than those disclosed in the particulars of sale, as the case may be, and provides a completely satisfactory reason for insistence on this requisition if the answer is "None, so far as the vendor is aware, but search of the appropriate register will show," or words to that effect.

The report of *J. W. Cafés, Ltd.* v. *Brownlow Trust, Ltd.*, on the point on which it is reported shows the result of the action: the plaintiffs argued that they were entitled to damages for loss of their bargain, while the defendants contended, successfully, as Lord Goddard, C.J., held, that they were not entitled to more than the rule in *Bain* v. *Fothergill*, *supra*, allowed them, viz., the return of their deposit and compensation for the expenses they had incurred in connection with their abortive purchase.

"A B C"

Landlord and Tenant Notebook

TRANSFER OF "BURDEN"

I WAS reminded, when reading the report of *Seaford Court Estates, Ltd.* v. *Asher* [1949] 2 All E.R. 155 (C.A.); [1950] 1 All E.R. 1018 (H.L.), of an observation made *obiter* by Lord Russell of Killowen, C.J., in *Broggi* v. *Robins* (1899), 15 T.L.R. 224 (C.A.). The claim was by the child of a tenant of two rooms let at 8s. 6d. a week, the plaintiff having been badly injured when a plank gave way and caused her to fall and upset some boiling soup; she succeeded at first instance, but the defendants' appeal was allowed on the ground that they had had no knowledge of the defect (the question whether the plaintiff, not being a party to the tenancy, had had any right of action at all was left open: see now *Cavalier* v. *Pope* [1906] A.C. 428). But in those days the landlord's statutory responsibility for fitness was limited to the state of affairs obtaining at the time of the letting, and as the defect was one which had arisen during the term the plaintiff had had to satisfy the court below (Day, J.) on this point without the assistance of the Housing of the Working Classes Acts. She called evidence of an express undertaking and further relied on the proposition that there was a usage binding landlords of such properties to effect such repairs. The defendants' witnesses denied the express undertaking, but said, "though they never actually agreed to keep premises in repair, yet in fact they always did whatever repairs were necessary." Lord Russell agreed with Day, J., who had said that even if the defendants had not agreed as alleged, the usage contended for existed and bound them. "There seemed to be an admission that in the usual course of things landlords did repairs in tenancies of that kind."

Statutory liability has since been imposed and defined (the liability is not unlimited: see *Jones* v. *Geen* [1925] 1 K.B. 659, in which Salter, J., said that the fitness for human habitation standard was a very humble one, falling short of the tenantable condition standard), but the fact remains that the usage was not necessarily one based on altruism; purely as a matter of self-interest, a landlord may effect repairs necessary in order to preserve a capital asset. Looked at from another point of view, the judgment of the Court of Appeal in *Broggi* v. *Robins* merely bears witness to the validity of the popular saying, "Someone's got to hold the baby."

Babies and hot water are often associated, and while *Seaford Court Estates, Ltd.* v. *Asher* dealt mainly with the question whether the word "burden" in the Increase of Rent, etc., Act, 1920, s. 2 (3)—"any increase of rent in respect of any transfer to a landlord of any burden or liability previously borne by the tenant where, as the result of such transfer, the terms on which any dwelling-house is held are on the whole not less favourable to the tenant than the previous terms, shall be deemed not to be an increase of rent for the purposes of this Act"—could include not only burdens actually borne but burdens which might have had to be borne if the landlords had not voluntarily discharged them, the fact that hot water is to be regarded as a practical necessity was an interesting feature of the case.

It had already been established, by *Winchester Court, Ltd.* v. *Miller* [1944] K.B. 734 (C.A.), and by *Property Holding Co., Ltd.* v. *Clark* [1948] 1 K.B. 630 (C.A.), that "burden" and "liability" did not mean the same thing, but that the terms to be affected must be contractual terms. In the one, landlords who had let to a tenant who had entered into an unqualified repairing covenant, that tenancy determining the standard rent, later let to one who covenanted to do repairs, "fair wear and tear excepted." It was held that they were entitled to more rent, though they did not covenant to make good the results of fair wear and tear; indeed, it was hardly suggested that a covenant by them to carry out such work would be a condition precedent to their raising rent; it was virtually assumed that they would maintain the property in their own, if not the tenant's, interest. In the other case, the 1934 lease by which the standard rent was determined contained agreements by the landlord to provide a cooker and a number of fittings, and to light and clean a common entrance hall; the omission of these provisions from a subsequent lease was held, though no covenants were entered into by the tenant, to effect a transfer of burden as a result of which the terms were on the whole less favourable to him: at all events as regards heating and cooking. As regards the lighting and cleaning of the common entrance hall, Evershed, L.J.'s judgment, and later that of Asquith, L.J., in *Seaford Court Estates, Ltd.* v. *Asher*, emphasises a distinction: in effect, the cost of providing for cooking and heating became a "practical burden" upon the tenant; that of cleaning and lighting the hall did not, for the tenant had not even a right to do such things.

The two decisions establish that "burden or liability" is not an example of tautology, and that if the *practical* result of one party being relieved of a liability is to impose a burden

on the other as a matter of necessity or even of prudence, there has been an alteration in the rent.

The position in *Seaford Court Estates, Ltd.* v. *Asher* was a novel one. The standard rent of a flat had been fixed by a letting which did not impose any liability on the landlords to supply hot water or to remove refuse, but in practice they had done both. In a subsequent lease they expressly covenanted to do both, and the question then arose whether they were entitled to an increased rent. It was held that they were, because there had been nothing in the terms of the earlier contract of tenancy to prevent them from ceasing to supply hot water and remove refuse, and if they had so ceased the tenant would have had to attend to these matters himself.

" That word [' burden ']," said Lord Greene, M.R., " must, I should have thought, at any rate include a thing which the tenant as such reasonably desires to have provided for his benefit for the provision of which he has no legal rights of recourse against anyone else, his landlord or a third party." In the Lords this was accepted by, *inter alia*, Lord Normand, subject to emphasis being laid on the fact that it was the *cost* that was the burden.

The " reasonably desires to have provided " is, I think, worth bearing in mind ; it implies that some benefits will be excluded. So far no examples have been afforded ; but time may produce such. I do not suggest that hot water, or, rather, the means of heating water, is not a reasonable requirement ; in *Daly* v. *Elstree Rural District Council* (1948), 64 T.L.R. 318 (C.A.), while it was held that the failure of a particular hot-water system in a dwelling-house did not make that house unfit for human habitation for the purpose of the Housing Act, 1936, s. 9 (1), all three members of the court emphasised the finding that other means of heating water were available.

R. B.

HERE AND THERE

IRISH CONTINGENT

BARRY, J., and Donovan, J., are settling with every appearance of comfort into their seats on the elevation of the King's Bench. If the Revenue paper were still part of the agenda on the common law side, the latter would perhaps have been even more at home there, for in the elucidation of its esoteric mysteries has he grown to eminence at the Bar. This qualification and his seat in Parliament always placed him high in the category of potential Law Officers of the Crown. Of his style, in the practice of a branch of law not remarkable for the simple directness of its principles and forms of expression, the outstanding characteristic was clarity of exposition. If he could make the Finance Acts clear, nothing that he is likely to encounter in the King's Bench or on circuit is calculated to baffle him. Of Barry, J., the appreciation one most often heard on the lips of those who saw him at the Bar was that he was " a beautiful performer." Although he did not often appear in the sort of cases that hit the newspaper headlines with a resounding crash, this stylistic perfection was palpable even to lay observers. It is said that not long ago a lady of foreign extraction, finding herself unimpressed by certain superficial characteristics of the very competent leader originally tendered to her by her legal advisers, was invited by them to make a grand tour of the High Court and pick one who accorded with her exacting standards. Her favourable reaction to Barry, K.C. (as he then was), in action was, they say, unhesitating and instantaneous. Incidentally, the two new judges bring the strength of the Irish contingent in the King's Bench Division up to five at the least. There is Lynskey, J., whose name is a variant of Lynch (far closer, indeed, to the Gaelic original). There is Devlin, J., who travelled from Ireland by way of Scotland to reach the English judiciary, and there is Gorman, J., who came by way of Liverpool and its Recordership. This substantially outnumbers the Welshmen—Stable, J., Morris, J., and Jones, J., and they are still in a minority even if they call in the reinforcement of Croom-Johnson, J., who, so it is reported on the Welsh circuits, has lately revealed at the assizes there a claim to Cambrian kinship.

AID TO LEARNING

THE Japanese, so we are told, are supposed to have borrowed most of their modern methods and techniques from somewhere in the West, but I don't quite know where they got this one from. It is reported that four judges of Japan's Supreme Court who delivered a faulty judgment in a case involving human rights were later fined £10 each by other Supreme Court judges for not knowing the law. The idea is new to me and opens up vistas of the most pleasing possibilities should it be adopted over here. If puisne judges and county court judges had ever before their eyes a £10 docking of their already tax-diminished salaries every time they were reversed on appeal I'm afraid there'd be a lot more reservation of judgments. Nor, of course, would the Lords Justices themselves be immune so long as the Olympians in the Lords could castigate any solecisms they might perpetrate with such devastating emphasis. A not so learned judge who fell into a habit (like the legendary Kekewich, J.) of being almost automatically reversed would be faced with the choice between resignation and the step from the judges' entrance to that other door in Carey Street. With such a stick hammering at the judicial flanks it would only be fair to provide some carrots too by way of positive incentive—say a bonus for accuracy, erudition and a tidy statement of facts. In these days when the citizen's money is converted by every conceivable, and often inconceivable, device to the purposes of the Treasury it is a wonder that no one in Whitehall has thought of trying on this particular fining idea—perhaps with a plausible proviso that the proceeds should be devoted to the upkeep of the Royal Courts of Justice. As a matter of fact, the idea actually is old enough to be new again, for Hengham, C.J. (temp. Edw. I), is supposed to have been mulcted, for some judicial misdemeanour, in a sum which was sufficient to build a clock tower at Westminster. The imagination reels at the notion of Lord Goddard being called upon to erect a replica of Big Ben, or even of the Law Courts clock.

TAIL PIECE

EXTRACT from a letter from a French lady who recently had the privilege of attending the deliberations of the Lords of Appeal in Ordinary in the Appellate Committee of the House of Lords : " We were also very pleased to have spent an hour in the Chamber with the five Lords so keen and on hot bricks ; how wonderful to be so well trained to keep up interest in these dry cases ; one never realise how the world goes round."

RICHARD ROE.

The King has been pleased, on the recommendation of the Lord Chancellor, to approve the following appointments : His Honour Judge F. K. GRIFFITH, M.C., and Mr. M. ARCHIBALD to be Chairman and Deputy Chairman respectively of the East Riding Quarter Sessions ; Mr. A. P. MARSHALL, K.C., to be Deputy Chairman of Warwick Quarter Sessions ; and Mr. G. A. THESIGER, M.B.E., K.C., to be Chairman of West Kent Quarter Sessions.

NOTES OF CASES

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

MONEYLENDING: REOPENING OF CLOSED TRANSACTIONS

Nadarajan Chettiar *v.* Walauwa Mahatmee and Another

Lord Porter, Lord Oaksey, Lord Radcliffe, Sir John Beaumont and Sir Lionel Leach. 21st June, 1950

Appeal from the Supreme Court of Ceylon.

The plaintiffs claimed relief under the Ceylon Moneylending Ordinance, 1918, in respect of transactions which had been voluntarily closed by them by repaying the defendant who had lent them money. The District Judge of Colombo held that the action lay, though the account had been closed, on the authority of *Saunders* v. *Newbold* [1905] 1 Ch. 260. The Supreme Court affirmed that decision, and the lender now appealed. Both courts in Ceylon found that the loans in question had been harsh and unconscionable. Section 2 (2) of the Ceylon Ordinance of 1918 is in terms identical with s. 1 (2) of the English Moneylenders Act, 1900.

Sir JOHN BEAUMONT, giving the judgment of the Board, said that in *Saunders* v. *Newbold* the English Court of Appeal had expressed the view that a borrower was entitled to open a closed transaction under s. 1 (2) of the Moneylenders Act, 1900. The decision of the Court of Appeal was affirmed in the House of Lords ([1906] A.C. 461), but without any discussion on the construction of s. 1 (2) of the Act of 1900. The district judge here had considered that the opinion of the lords justices on the effect of s. 1 (2) was really *obiter*, but that that was of little consequence since the right of a borrower to reopen a closed transaction under s. 1 (2) had been recognised in later cases in the English Court of Appeal (see *Part* v. *Bond* (1906), 22 T.L.R. 253, and *Kerman* v. *Wainewright* (1916), 32 T.L.R. 295). It was contended for the borrowers that it was the duty of courts in Ceylon to follow the decision of the English Court of Appeal on the construction of words identical with those used in a Ceylon Ordinance. In *Trimble* v. *Hill* (1879), 5 App. Cas. 342, at p. 344, the Board had laid down what was, in their view, a sound rule, though there might be in any particular case local conditions which made it inappropriate. It was not suggested that any such conditions existed in the present case, and the courts in Ceylon had acted correctly in following the decision of the English Court of Appeal. They would humbly advise that the appeal should be dismissed. Appeal dismissed.

APPEARANCES: *Barton*, K.C., and *Gahan* (*Peake & Co.*); *R. O. Wilberforce* (*P. S. Martensz*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL

RENT RESTRICTION: SURRENDER OF TENANCY

Foster *v.* Robinson

Evershed, M.R., Cohen and Singleton, L.JJ. 21st June, 1950

Appeal from Scunthorpe and Brigg County Court.

The plaintiff landlord agreed with an aged tenant that he need pay no rent but might live in the cottage in question for the rest of his life. The tenant thus lived in the cottage rent free for nearly four years before he died. The defendant, his daughter, had lived with him in the cottage for nine years before his death, and was living there at his death. She claimed to be entitled to remain in the cottage as her father's administratrix in whom the contractual tenancy, which she said was still in existence at his death, vested. The county court judge made an order for possession, holding that, as the result of the interview between the landlord and the tenant on 13th May, 1946, the contractual tenancy had ceased and a new arrangement had been made under which the tenant became a mere licensee with permission to live in the cottage for the rest of his life, and that the Rent Restriction Acts, therefore, did not apply. The defendant appealed.

EVERSHED, M.R., said that the county court judge had found as a fact that there was no question of the landlord's seeking to gain an unfair advantage in May, 1946, and that the arrangement then made was a great deal more than a mere agreement for the remission of rent, as the express and primary condition had been that the tenancy was to cease. Further, so far as the transaction was to his benefit, the tenant had enjoyed it till his death. Apart, then, from any question under the Rent Restriction Acts, the agreement was effectual to produce a surrender by operation of law of the old contractual agreement. It had, however, been suggested that the arrangement made could not take away the benefit arising under the Rent Restriction Acts in respect of the old lease. Such a view appeared to be inconsistent with *Turner* v. *Watts* (1928), 44 T.L.R. 337. There was no reason why the arrangement of 1946 should not be as effective as if it had been reduced to writing.

COHEN and SINGLETON, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *Michael Hoare* (*Sharpe, Pritchard & Co.*, for *W. Bains*, Brigg); *J. P. Widgery* (*Waterhouse & Co.*, for *Sowter & Gibson*, Brigg).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

HUSBAND AND WIFE: CONDONATION: REVIVAL

Beale *v.* Beale

Bucknill, Somervell and Denning, L.JJ. 21st June, 1950

Appeals from Mr. Commissioner Grazebrook, K.C.

A husband and wife both sought divorce on the ground of cruelty. The Commissioner dismissed both petitions, negativing cruelty and saying that in any event any cruelty had been condoned.

BUCKNILL and SOMERVELL, L.JJ., both held that no cruelty had been proved by either side, so that no question of condonation arose.

DENNING, L.J., said that even if the episodes which had taken place some fifteen years or more previously amounted to cruelty they could not be made a ground for divorce. *Beard* v. *Beard* [1946] P. 8 and *Richardson* v. *Richardson* [1950] P. 17 established that condonation was conditional forgiveness, the condition being that the guilty party should henceforward behave properly; he was, so to speak, taken back on probation. The probationary period did not, however, necessarily last for life, and a point might be reached where the guilty party had, by his good behaviour, proved himself worthy of the trust and confidence of the other. The further past offences receded into the distance, the more did it become difficult to revive them, until the time might come when the proper inference was that the forgiveness was no longer conditional, but had become absolute. That view met the objections so forcibly expressed by Vaisey, J., in his dissenting judgment in *Beard* v. *Beard*, *supra*. It was also in accord with what Bucknill, L.J., had said in *Richardson* v. *Richardson*, *supra*. From January, 1938, to December, 1945, the parties here had lived a normal married life without untoward incidents. In those circumstances the violent episodes which had taken place in the early years of the marriage must be regarded as being forgiven by both sides absolutely and not conditionally. They could not be revived by the events after December, 1945. There had been no cruelty after that date, and the appeals failed. Appeals dismissed.

APPEARANCES: *J. A. Petrie* and *W. C. W. Arnold-Baker* (*J. E. Lickfold & Sons*); *D. Loudoun* (*Crossman, Block & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

HOSPITAL: NATIONALISATION: MEDICAL SCHOOL

In re Bland-Sutton, deceased; National Provincial Bank *v.* Council of Middlesex Hospital Medical School and Others

Danckwerts, J. 7th July, 1950

Adjourned summons.

By her will Lady E. G. Bland-Sutton, who died in 1943, directed the plaintiff, her trustee, to hold an endowment fund, now £23,150, on trust, after providing for a scholarship at the Royal College of Surgeons, to pay the income to the Bland-Sutton Institute of Pathology at Middlesex Hospital, but if the institute should cease to be carried on or its name be changed, or if Middlesex Hospital were nationalised or passed into public ownership, to transfer the whole fund to the Royal College of Surgeons. The summons asked whether that provision was valid or void for uncertainty, perpetuity or otherwise, and whether any of the events on which the gift over was made had in fact taken place, and, if so, at what date. (*Cur. adv. vult.*)

DANCKWERTS, J., held that unless he was compelled by *In re Royal College of Surgeons* [1899] 1 Q.B. 871 to hold otherwise, the object of the Royal College of Surgeons was the promotion of the study and practice of the art and science of surgery, and not the interests of surgical practitioners. He thought he was at liberty to hold, for the present case, that the college was a charity and he did so hold. The next question was whether any of the events on which the gift over was to take effect had happened. The popular view might be that Middlesex Hospital had been nationalised, but the defeasance clause must be strictly satisfied, and therefore the provisions of the National Health Service Act, 1946, must be examined with some care. Middlesex Hospital was a teaching hospital, and the Bland-Sutton Institute of Pathology was part of a medical school when the Act came into force on 5th July, 1948. After referring to ss. 1, 3, 6 and 7, his lordship said that s. 8 provided that, where a medical or dental school was associated with any hospital to which s. 6 applied, nothing in either s. 6 or s. 7 should be taken to affect any property or liabilities held or incurred for the purposes of that school, and those purposes should not be deemed to be purposes of the hospital. That provision plainly took the Bland-Sutton Institute out of the provisions of ss. 6, 7, 60 and 79 (2) of the Act. By s. 8 (2) the property of a medical school of the University of London, as this was, was to vest in the governing body of that school, which, by s. 15, if the school were not already incorporated, had to prepare a scheme for constituting a new governing body of the school. The scheme had been prepared and submitted to the governing body of London University and the school and its property were now vested in the council of the school, a body corporate. So far as that property and that body were concerned, it seemed to him that it had neither been nationalised nor had passed into public ownership. The old Middlesex Hospital had not, as a whole, been nationalised or passed into public ownership, and the most relevant part for the purposes of the trusts of the will had been transferred to a corporate body and was not in public ownership. For the purposes, therefore, of the defeasance clause, the Middlesex Hospital had not become nationalised or passed into public ownership, so that the bank could lawfully apply the income of the endowment fund for the Bland-Sutton Institute of Pathology, though it might be administered by a differently constituted authority. Accordingly none of the events on which the gift over to the Royal College of Surgeons was to take effect had at present occurred.

APPEARANCES: *Nigel Warren* (*Withers & Co.*); *Pascoe Hayward*, K.C., and *R. W. Goff* (*Peake & Co.*); *Sir Andrew Clark*, K.C., and *Morris Smith* (*Wilde, Sapte & Co.*); *Denys B. Buckley* (*Treasury Solicitor*).

[Reported by H. LANGFORD LEWIS, Esq., Barrister-at-Law.]

PROFITS TAX: TAXICAB PROPRIETORS

London General Cab Co., Ltd. *v.* Inland Revenue Commissioners

Vaisey, J. 13th July, 1950

Case stated by Commissioners for the General Purposes of the Income Tax Acts.

The appellant company owned a large number of taxicabs, which were taken out and driven by a number of licensed drivers on the terms that the company provided petrol and maintenance and at the material time took two-thirds of the amount shown on the meter, the driver retaining the remaining third, extra charges, and tips. The company prescribed the hours of work and might (but did not) prescribe the district in which the driver worked. It was admitted that for some purposes the relationship between the company and a driver was that of bailor and bailee. The company contended that they were statutory undertakers in the trade of rendering the service of the carriage of passengers by road, and that they were as such exempt from profits tax. The Crown contended that the company were merely hirers of cabs to independent contractors, and that they were not precluded by statutory enactment from charging more than a specified sum for letting out their cabs. By s. 19 (1), the Finance Act, 1937, provides for the imposition of the tax. By s. 19 (5), "This section shall not apply to any trade or business carried on by statutory undertakers and consisting wholly or mainly in the rendering . . . of any of the following services, namely . . . (*d*) . . . the carriage of passengers or goods by road . . . the expression 'statutory undertakers' means any local or public authority authorised by or by virtue of any enactment to render any of the services aforesaid . . . and any other person so authorised who is precluded by or by virtue of any enactment from charging any higher price for those services than that authorised by or by virtue of the enactment . . ."

VAISEY, J., said that the relationships between owners, drivers, "fares," and members of the public were complex and difficult to define. The commissioners had relied on *Smith* v. *General Motor Cab Co., Ltd.* [1911] A.C. 188. They appeared to have found as a fact that the relationship between the company and the drivers was that of bailor and bailees, and he could not see his way to disturb that finding. In his opinion, moreover, the company were not rendering a "service" within the meaning of s. 19 (5), and did not come within the definition of "statutory undertakers," nor could they properly be said to be "authorised." The appeal would be dismissed.

APPEARANCES: *Cyril King*, K.C., and *G. Tribe* (*White and Co.*); *C. N. Shawcross*, K.C., and *R. P. Hills* (*Solicitor of Inland Revenue*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF CRIMINAL APPEAL

PRACTICE DIRECTION: RECEIVING STOLEN PROPERTY

R. *v.* Aves

Lord Goddard, C.J., Humphreys and Parker, JJ.
19th June, 1950

LORD GODDARD, C.J., giving the judgment of the court dismissing an appeal from a conviction of receiving stolen property knowing it to have been stolen, said that where the only evidence was that an accused person was in possession of property recently stolen, a jury might infer guilty knowledge (*a*) if he offered no explanation to account for his possession, or (*b*) if the jury were satisfied that the explanation which he did offer was untrue. If, however, the explanation offered were one which left the jury in doubt whether he knew that the property was stolen, they should be told that the case had not been proved, and therefore the verdict should be not guilty. He (his lordship) would make this addendum to the formula above stated: if there were evidence

that the prisoner was in possession of property recently stolen and other evidence as well which tended to show guilty knowledge, then the chairman should direct the jury, in regard to recent possession, in the terms mentioned, and should then go on to consider the other evidence against the prisoner which might or might not be consistent with the explanation, if any, which he had given.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PRACTICE DIRECTION: PREVENTIVE DETENTION

R. *v.* Sedgwick

Lord Goddard, C.J., Humphreys and Parker, JJ.
19th June, 1950

LORD GODDARD, C.J., giving the judgment of the Court of Criminal Appeal substituting a sentence of five years' imprisonment for one of five years' preventive detention imposed on William Henry Sedgwick for office-breaking and larceny, said that the court had in *R.* v. *Barrett* (1949), 65 T.L.R. 673, and in other cases, called the attention of recorders and chairmen of courts of quarter sessions to the fact that, except in the case of an old man, a sentence of five years' preventive detention was inappropriate. If preventive detention were justified, it was because the court considered that the public must be protected against the depredations of a particular prisoner for a long period. Five years, which meant only three years and four months if the prisoner behaved himself while in prison, was not appropriate for preventive detention in such cases. If a court thought a case one in which preventive detention should be ordered, seven years was the irreducible minimum, and the period should generally be eight years or even longer. Special places had to be set aside for prisoners undergoing preventive detention, and if courts continued to impose only five years' preventive detention, those places would be occupied by prisoners brought there for a short period instead of for the longer period which Parliament evidently desired. If a court considered that the longest time for which a man ought to be deprived of his liberty was five years, subject to the remission of one-third, the appropriate sentence was five years' imprisonment and not five years' preventive detention.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

ROYAL ASSENT

The following Bills received the Royal Assent on 12th July :—

Aberdeen Harbour Order Confirmation.
Carlisle Extension.
Distribution of Industry.
Faculty of Homœopathy.
Foreign Compensation.
Gateshead and District Tramways.
International Organisations (Immunities and Privileges).
Land Drainage (Surrey County Council (Hogsmill River Improvement) (Amendment)) Provisional Order.
London County Council (Money).
Merchant Shipping.
Mersey Docks and Harbour Board.
Mid-Southern Utility.
Midwives (Amendment).
Ministry of Health Provisional Order (Colne Valley Sewerage Board).
Ministry of Health Provisional Order (South-West Middlesex Crematorium Board).
Port of London.
Prescelly Water.
Public Registers and Records (Scotland).
Royal Patriotic Fund Corporation.
Runcorn-Widnes Bridge
South Staffordshire Waterworks.
Tyne Improvement.
Wakefield Extension.
Wear Navigation and Sunderland Dock.

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time :—

Cinematograph Film Production (Special Loans) Bill [H.C.] [11th July.
Finance Bill [H.C.] [11th July.

Read Third Time :—

Adoption Bill [H.L.] [13th July.
Coal Mining Subsidence Bill [H.C.] [13th July.
Food and Drugs (Milk, Dairies and Artificial Cream) Bill [H.L.] [13th July.
Forth Road Bridge Order Confirmation Bill [H.C.] [13th July.
London County Council (General Powers) Bill [H.C.] [12th July.
Matrimonial Causes Bill [H.L.] [13th July.
Shops Bill [H.L.] [13th July.

In Committee :—

Highways (Provision of Cattle-Grids) Bill [H.C.] [11th July.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time :—

Isle of Man (Customs) Bill [H.C.] [13th July.
To amend the law with respect to customs in the Isle of Man.

Read Second Time :—

Allotments (Scotland) Bill [H.L.] [12th July.
London Government Bill [H.C.] [14th July.
Middlesex County Council Bill [H.L.] [10th July.

Read Third Time :—

Agriculture (Miscellaneous Provisions) Bill [H.C.] [13th July.
Colonial and other Territories (Divorce Jurisdiction) Bill [H.L.] [14th July.
Doncaster Corporation Bill [H.L.] [13th July.
Dover Corporation Bill [H.L.] [12th July.
Leyton Corporation Bill [H.L.] [12th July.
London County Council (Woolwich Subsidences) Bill [H.L.] [14th July.
Maintenance Orders Bill [H.L.] [14th July.
Miscellaneous Financial Provisions Bill [H.C.] [14th July.

In Committee :—

Medical Bill [H.L.] [14th July.

B. DEBATES

On the motion for the adjournment, Sir HERBERT WILLIAMS raised the question of late claims to compensation for war damage. In many cases the local authority had done first-aid repairs to the premises. Many tenants thought: "The town hall knows all about it; they have come to do a lot of work and no doubt they will come to finish it later," and in consequence had never put in a formal claim to the War Damage Commission. Others had gone away and did not know of the damage to their property for some considerable time. Others had assumed the landlord was looking to the matter, or that the tenant had put in a claim. He was satisfied that by reason of the rejection of genuine late claims injustice was being done to many people. Mr. RALPH MORLEY, supporting the mover, said many people had been away on war service when damage occurred to their property. There were also elderly people who were unaware of the formalities required. Again, there were cases where an occupier had failed to notify second and third incidents damaging the property and the owner consequently was without compensation in respect thereof. Some people did not discover there had been war damage until two or three months after they had bought premises, and the War Damage Commission had taken up the attitude *caveat emptor*. Many people had not seen the announcements of the War Damage Commission in the newspapers,

neither had they heard them over the wireless. He hoped the Chancellor would be able to make some concession on this matter.

Mrs. MIDDLETON regretted that these claims were turned down by just a duplicated form showing the claim to be out of date, and that nothing was done to explore the validity of the claim with the local authorities or to inform the claimant that if he could satisfy certain criteria his claim might even yet be admitted by the War Damage Commission. She and other members interested in this matter would like to see the word " structural " eliminated from the formula of " substantial structural damage " to which the Commission had so far been working. It was intolerable that one claim for ceilings and internal walls was disallowed because there was nothing that could be classified as major structural damage, while across the street a claim was allowed because an external crack had appeared. Secondly, they considered that the opinion of the local authority should be taken as to the genuineness of every claim before it was turned down.

Replying to the debate, Sir STAFFORD CRIPPS said it was a very much easier task to press for money for one's constituents than to stand up for the nation as a whole in resisting expenditure of this kind. The War Damage Commission had been placed outside politics, and they, and not Ministers, had power to vary in particular cases the final date for notification of claims. The question was: Had they exercised their discretion wisely or in such a way that it should be taken away from them? In this type of insurance as in any other the paying body must have power to fix a reasonable period of notification so that it could have an opportunity of testing the circumstances while they were yet fresh.

Up to September, 1946, any claim could be notified if the claimant would make a statutory declaration of its truth. In the spring of 1947 a more rigid system was adopted with regard to late notifications and this had been applied with increasing severity as time passed. The position now was that the Commission would still accept late claims where there was an acceptable reason for the extraordinary delay and where there was substantial structural damage still unrepaired which was found by the Commission to be war damage. In the six months ended 30th June, 1950, some 1,200 to 1,300 such claims had been accepted. There were also cases of exceptional reasons for delay where the Commission might accept notification for non-structural damage. The House would agree that in these circumstances this discretion must be left to the War Damage Commission.

The only area, he considered, in which they might look to the Commission for some slight alteration was in those special cases where the reason for the delay was quite exceptional. He thought they would be prepared to do this, not with a view to any broad or wide extension, but to see whether, in the hard cases that were brought forward, there were any individual cases where this principle could be applied. It must not be forgotten by members that it was not their money which they were giving away, but someone else's. When he came to ask for powers to collect that money the atmosphere of the House was quite different. [11th July.

C. QUESTIONS

In reply to a number of questions, the ATTORNEY-GENERAL stated that the Government were giving urgent consideration to the problems in regard to leaseholds in the light of the Interim and Final Reports of the Leasehold Committee. A number of meetings had already taken place. The Government were well aware of the fact that every day situations of great difficulty, if not of injustice, were occurring. It was the desire of the Government to introduce legislation at the earliest possible moment. [10th July.

Mr. WAKEFIELD asked what restrictions were placed on professional moneylenders in respect of loans for speculative purposes. In reply, Sir STAFFORD CRIPPS said that loans by professional moneylenders, like all other classes of loan, came under the Control of Borrowing Order, 1947. The Treasury did not issue consent to loans for speculative purposes. [10th July.

Mr. HUGH DALTON stated that claimants on Form L.39 had never had a right to claim contributions towards the professional costs of making their claims. The only claimants who had such a right were those who provided professional valuations by 31st October, 1949, and whose claims were not excluded by the *de minimis* principle. The Central Land Board had at no time conceded the right to claim a contribution in substantiated L.39 cases. Payment in these cases would be *ex gratia*. [11th July.

Mr. DALTON stated that he hoped that the report of the Schuster Committee, on the scope of planning and the qualifications necessary or desirable for persons engaged in it, would be presented in September. [11th July.

Mr. DALTON stated that he was advised that the law under the London Building Acts was not altogether clear as to the powers of local authorities in London to forbid the flying of flags. He was further advised that it was possible, by an Order in Council, to restrict, in this respect, the operation of the London Building Acts. This would, however, be a cumbrous procedure and he hoped that he would not be obliged to consider it. [11th July.

Sir STAFFORD CRIPPS stated that British subjects living in sterling area and soft currency countries could invest the proceeds of legacies left them by residents of the United Kingdom in any sterling security. Those persons, however, who had become permanent residents of hard currency countries were only permitted to transfer the first £500 of each bequest. The remaining proceeds were treated as blocked and, according to the current rules for the investment of blocked funds, they could be invested only in British Government securities with a life of not less than ten years. [11th July.

Mr. CHUTER EDE stated that where a dog had done injury to cattle or sheep, the owner of the dog at the time of the injury was liable under s. 1 of the Dogs Act, 1906, for damages, but not for any other penalty. Section 2 of the Dogs Act, 1871, empowered a court of summary jurisdiction, on receiving a complaint that a dog was dangerous and not under proper control, to make an order requiring the owner to keep the dog under proper control or to have it destroyed. He was advised that no such order could be made where the ownership of the dog had been transferred to someone else before the complaint was made, but he could hold out no hope of legislation to alter this position. [13th July.

Mr. STRACHEY stated that the War Office was interested in the question of leasehold enfranchisement referred to in para. 65 of the Final Report of the Leasehold Committee inasmuch as it leased a number of properties to civilian users. [13th July.

STATUTORY INSTRUMENTS

Draft **Aberdeen** and District Milk Marketing Scheme (Application to Banff) Order, 1950.

Assessor of Public Undertakings (Pensionable Employment) (Scotland) Regulations, 1950. (S.I. 1950 No. 1120.)

Draft **Civil Defence** (Police Training) (Scotland) Regulations, 1950.

Draft **Controlled Bodies** (Compensation to Employees) Regulations, 1950.

Discontinuance of Legalised Police Cells (Scotland) Rules, 1950.

Draft **Education** (Scotland) Miscellaneous Grants (Amendment No. 1) Regulations, 1950.

Export of Goods (North Korea) Order, 1950. (S.I. 1950 No. 1117.)

Feeding Stuffs (Prices) (Amendment No. 2) Order, 1950. (S.I. 1950 No. 1118.)

Glamorgan River Board Area Order, 1950. (S.I. 1950 No. 1127.)

Gloves (Manufacture and Supply) (Amendment No. 5) Order, 1950. (S.I. 1950 No. 1089.)

Guisborough Water Order, 1950. (S.I. 1950 No. 1105.)

Draft **International Organisations** (Immunities and Privileges of the Council of Europe) Order in Council, 1950.

Draft International Organisations (Immunities and Privileges of the Universal Postal Union) Order in Council, 1950.

Laundry (Maximum Charges) (No. 2) Order, 1950. (S.I. 1950 No. 1103.)

London — Aylesbury — Warwick — Birmingham Trunk Road (St. John's Street and Field Street, Bicester) Order, 1950. (S.I. 1950 No. 1114.)

London Traffic (Prescribed Routes) (No. 10) Regulations, 1950. (S.I. 1950 No. 1115.)

Draft **North of Scotland** Milk Marketing Scheme (Application to Moray and Orkney) Order, 1950.

Paper (Use in Betting Schemes) Order, 1950. (S.I. 1950 No. 1112.)

Poultry Carcases (Importation) Order, 1950. (S.I. 1950 No. 1087.)

Representation of the People Regulations, 1950.

Representation of the People (Northern Ireland) Regulations, 1950.

Draft Representation of the People (Scotland) Regulations, 1950.

Sale of Food (Weights and Measures: Prepacked Articles) Regulations, 1950. (S.I. 1950 No. 1104.)

South West Wales River Board Area Order, 1950. (S.I. 1950 No. 1127.)

Stopping up of Highways (Warwickshire) (No. 3) Order, 1950. (S.I. 1950 No. 1123.)

Stopping up of Highways (Worcestershire) (No. 2) Order, 1950. (S.I. 1950 No. 1122.)

Superannuation (Teaching and Local Government) Rules, 1950. (S.I. 1950 No. 1108.)

Tae Fechan Water Supply Order, 1950. (S.I. 1950 No. 1119.)

Town and Country Planning (Development Charge Exemptions) Regulations, 1950.

Town and Country Planning (Development Charge Exemptions) (Scotland) Regulations, 1950.

Town and Country Planning (Use Classes) Order, 1950. (S.I. 1950 No. 1131.)

As to this order, see p. 463, *ante*.

Town and Country Planning (Use Classes) (Scotland) Order, 1950. (S.I. 1950 No. 1133.)

Utility Apparel (Men's, Youths' and Boys' Outerwear) (Manufacture and Supply) (Amendment) Order, 1950. (S.I. 1950 No. 1090.)

Utility Cloth and Utility Household Textiles (Maximum Prices) (Amendment No. 9) Order, 1950. (S.I. 1950 No. 1100.)

Utility Pram Rugs (Manufacture and Supply) Order, 1950. (S.I. 1950 No. 1100.)

Veterinary Surgeons (University Degrees) (Liverpool) Order of Council, 1950. (S.I. 1950 No. 1110.)

Youth Employment Committees Regulations, 1950. (S.I. 1950 No. 1107.)

NOTES AND NEWS

Professional Announcement

Messrs. Lee, Scott, Start & Mottershead, of 36 Kennedy Street, Manchester, 2, announce that they have taken into partnership Mr. Roger Grieves, who has been an assistant solicitor with the firm for some time. The name of the firm will remain unchanged.

Honours and Appointments

The King has approved that the honour of knighthood be conferred on Mr. P. R. J. Barry, K.C., and Mr. T. N. Donovan, K.C., upon their appointment as judges of the High Court of Justice.

The King has been pleased, on the recommendation of the Lord Chancellor, to make the following appointments: Mr. G. N. Black to be Recorder of Huddersfield; Mr. J. Charlesworth to be Recorder of Middlesbrough; Mr. P. C. Lamb, K.C., to be Recorder of Rochester; Mr. W. R. Laurence to be Recorder of Pontefract; and Mr. H. T. Nelson, K.C., to be Recorder of Liverpool.

Personal Notes

Mr. L. W. Gregory, assistant solicitor to Nuneaton Borough Council, was married on 8th July to Miss Frances Josephine Buckler, of Hartshill.

Mr. H. E. F. Lock, solicitor, of Dorchester, was married recently to Miss Helen Jane Boscawen Somerset.

Miscellaneous

THE SOLICITORS ACTS, 1932 TO 1941

On the 6th day of July, 1950, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of Keith Philip Kinloch Thom, formerly of Lucente, Penmaenmaur, in the County of Caernarvon, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

Wills and Bequests

Mr. W. Cullimore, solicitor and director, of Chester, left £22,322 (£21,797 net).

OBITUARY

MR. E. F. HUGHES

Mr. Ernest Frederick Hughes, head of the firm of Hughes and Son, of John Street, Bedford Row, W.C.1, died on 8th July, aged 74. He was admitted in 1900.

SOCIETIES

The address of the United Law Clerks' Society has been changed to 2 Stone Buildings, Lincoln's Inn, W.C.2.

Among new cases which came before the Board of Directors of The Law Association on 3rd July was an applicant whose own health had broken down after she had nursed her mother for many years. Earlier she had taken a post to help the family along a stony path when her father—a London solicitor—was a semi-invalid for ten years before his death. Now, at the age of sixty-five, the pittance which came to her from the sale of the family home has been exhausted, and her only relatives are themselves invalids and impoverished. The Association's grant of £1 a week, voted by the Board, brings her income to a trifle over £3 16s. a week.

Holiday grants for children of solicitors were another item on the agenda, and £15 each was granted to a girl working for her final examination as an orthoptist, a younger girl in the throes of her school-leaving examination, and a boy who has just passed his examination to enter Sandhurst in the autumn.

Mr. G. M. Lockhart, of Clement's Inn, and Mr. John Rutherford, of St. Andrew Street, Holborn, were admitted to membership. Other London solicitors who would like to help these and the numerous other cases which come up for consideration month by month are asked to apply for membership to the Secretary, Law Association, 25 Queensmere Road, S.W.19, enclosing one guinea for the first year's subscription, or ten guineas for life membership.

The annual general meeting of The Medico-Legal Society will be held at Manson House, 26 Portland Place, W.1, on Thursday, 27th July, 1950, at 8 p.m.

An ordinary meeting of the Society will be held immediately following the annual general meeting, when a paper will be read by R. Sessions Hodge, M.R.C.S., L.R.C.P., D.P.M. (R.C.P. & S.), on "The Hormone Treatment of the Sexual Offender."

BOOKS RECEIVED

The Law of Stamp Duties. By E. G. Sergeant, O.B.E., LL.B., Solicitor, of the Office of the Solicitor of Inland Revenue. Second Edition. 1950. pp. xlix, 357 and (Index) 32. London: Thames Bank Publishing Co., Ltd. 43s. including postage.

Make the Tree Good. The Bible Society's Popular Report, 1950. Edited by John Eric Fenn. 1950. The British and Foreign Bible Society. 6d. net.

Foa's General Law of Landlord and Tenant. Seventh Edition. First Supplement. By S. W. Magnus, B.A., of Gray's Inn, Barrister-at-Law. 1950. pp. 85. Hadleigh: Thames Bank Publishing Co., Ltd. 7s. 6d. net.

Death Duties. "This is the Law" Series." By K. McFarlane, LL.D., of the Estate Duty Office. 1950. pp. viii and (with Index) 110. London: Stevens & Sons, Ltd. 4s. net.

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